

OAH Docket No. 9-3001-8251-2  
TRB Docket No. D-5826/R-4318

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE TRANSPORTATION REGULATION BOARD

In the Matter of the Application  
of Burlington Northern Railroad Co.  
for the Authority to Transfer Agency  
Service for the Brainerd, Minnesota  
Agency to Burlington Northern Railroad  
Company's Centralized Service Agency  
at Superior, Wisconsin

FINDINGS OF FACT,  
CONCLUSIONS AND RECOMMENDATION

The above-entitled matter came on for hearing before Administrative Law Judge Phyllis A. Reha on October 20, 1993 at 10 a.m. at the Senior Citizen Center Library, Brainerd, Minnesota. The record closed on November 12, 1993, the last date for the receipt of post-hearing comments.

Alfonse J. Cocchiarella, Attorney at Law, Spence, Ricke and Thurmer, P.A., Suite 600, Degree of Honor Building, 325 Cedar Street, St. Paul, Minnesota, appeared on behalf of the Petitioner, Burlington Northern Railroad Company ("BN" or "Railroad"). Thomas J. Dwyer, Minnesota State Legislative Director, appeared on behalf of the Transportation Communications Union ("TCU"), 3948 Central Avenue Northeast, Columbia Heights, Minnesota. Ron Hylla, Chair, TCU Local 434, St. Cloud, Minnesota, appeared on behalf of Mike Heir, Resident Agent, Brainerd, Minnesota.

Notice is hereby given that, pursuant to Minn. Stat. § 14.61, and the Rules of Practice of the Public Utilities Commission, as applicable to the Transportation Regulation Board, and the Rules of the Office of Administrative Hearings, exceptions to this Report, if any, by any party adversely affected must be filed within 20 days of the mailing date hereof with the Transportation Regulation Board, Minnesota Administrative Truck Center, 254 Livestock Exchange Building, 100 Stockyards Road, South St. Paul, Minnesota 55075. Exceptions must be specific and stated and numbered separately. Proposed Findings of Fact, Conclusions and Order should be included, and copies thereof shall be served upon all parties. If desired, a reply to exceptions may be filed and served within ten days after the service of the exceptions to which reply is made. Oral argument before a majority of the Board may be permitted to all

parties adversely affected by the Administrative Law Judge's recommendation who request such argument. Such request must accompany the filed exceptions or reply, and an original and five copies of each document must be filed with the Board.

The Minnesota Transportation Regulation Board will make the final determination of the matter after the expiration of the period for filing exceptions as set forth above, or after oral argument, if such is requested and had in the matter.

Further notice is hereby given that the Board may, at its own discretion, accept or reject the Administrative Law Judge's recommendation and that said recommendation has no legal effect unless expressly adopted by the Board as its final order.

#### STATEMENT OF ISSUE

The issue to be determined in this proceeding is whether Burlington Northern's proposal to terminate agency service at Brainerd and to transfer the functions of that agency to its centralized service agency at Superior, Wisconsin will substantially reduce the level of safety, health, or general welfare of the Railroad's customers, employees, or the public, within the meaning of Minn. Stat. § 219.85 (1992).

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. On July 8, 1993, Petitioner, Burlington Northern Railroad Company filed a petition with the Minnesota Transportation Regulation Board seeking authority to terminate agency service at Brainerd, Minnesota and to transfer the functions of that agency to its centralized service agency at Superior, Wisconsin.

2. On J

3. On September 10, 1993 a Notice of Hearing was published in the Board's weekly calendar, setting October 19, 1993 as the date of the hearing. On same date, the Board mailed a copy of the Notice to all potentially affected and interested parties. The matter was then referred to the Office of Administrative Hearings for the purpose of conducting a hearing and making a recommendation to the Board on the basis of the evidence received at the hearing. Upon the request of the Railroad for good cause shown, the October 19, 1993 hearing date was changed to October 20, 1993. All parties were notified of the continued hearing date.

4. BN operates various railroad lines in the states of Minnesota and Wisconsin, which are served by its Brainerd agency and by its Superior, Wisconsin centralized service agency. The agency at Brainerd currently serves stations at Brainerd, Aitkin, Deerwood, Klein Spur, Pillager and Motley, Minnesota. Attached as Exhibit B to the BN petition is a listing of customers served by the Brainerd agency. There are 14 customers listed on Exhibit B. (Jurisdictional Ex. A). All of these customers were personally contacted by BN operating and/or customer personnel and informed of the proposal. Most of the contacts were made by Trainmaster Griffen, who has the overall responsibility for train operation in Brainerd's territory. BN received no objections from any of the 14 customers prior to the date of the scheduled hearing. Four of the customers wrote letters indicating they had no objection to the transfer of agency services to Superior, Wisconsin.

5. Potlatch Corporation-Northwest Paper Division is the BN's largest customer. Potlatch generates 75% of BN's business out of the Brainerd agency. Potlatch submitted comments supporting BN's petition.

6. On the date of the hearing, the TCU representative submitted a letter dated October 19, 1993 from the plant manager of Trus Joist MacMillan, one of BN's customers in the Brainerd area. Trus Joist MacMillan has recently expanded its operation in northern Minnesota. It currently ships three to five train cars per week. It estimates that once its operation is at full capacity, it will have need for three to four hundred train cars annually to support its plant and customer needs. Trus Joist MacMillan is concerned that the continued centralization plan of the Railroad will have a negative impact on the reliable and dependable service provided to rail users. It views the station agent as a valuable link to the overall services that it provides to its customers. (TCU Ex. 5). When the Railroad contacted existing customers in the Brainerd area, it did not speak with the plant manager at Trus Joist MacMillan, but, rather spoke with the Company's traffic manager, who was in charge of contacts with BN regarding shipping and receiving. BN received no objections to the proposed transfer from the traffic manager.

7. BN's proposal to transfer agency services from Brainerd to Superior, Wisconsin is part of a larger consolidation plan by the railroad to consolidate agency functions to take advantage of improved technology and procedures. Among the modernized procedures currently in use by the Railroad are facsimile transmissions, cellular phones, phone to radio transmissions, and computers. The use of this technology allows customers and shippers of the Railroad to

directly perform the tasks once performed by Railroad employees. Thus, the new technology has eliminated many manual processes which previously required an agent to perform. Thus, the agent now is an intermediary only. Customers can directly interface with the Railroad through the computer systems. The Railroad has developed a national tracing system, whereby a customer can feed information into a computer directly to the central agency in Superior, Wisconsin or Fort Worth, Texas. By eliminating the agent, an intermediary is removed from the link thereby reducing the opportunity for confusion and

8. Currently, the Brainerd agency handles its customer rail car needs by relaying the car orders to the centralized service agency at Superior, Wisconsin. Other station services performed include inputting car releases, demurrage and train movements. All of these services are included in BN's various computerized systems. The same functions can be handled directly and efficiently through the Superior, Wisconsin centralized agency.

9. BN's Superior, Wisconsin agency is open 24-hours-per day, 365-days-per year, and is staffed by a manager of customer service and 50 support staff.

10. The Brainerd agency is staffed by one clerk from 8 a.m. to 4 p.m. Monday through Friday. A relief clerk from a two-person pool, staffs the Brainerd agency on Saturdays and Sundays from 8 a.m. to 4 p.m. and when the Brainerd agent is on vacation or otherwise absent. With respect to most of its operations, the Brainerd agency is merely an intermediary. For example, the present procedure for railroad car ordering is as follows: The customer notifies the clerk at Brainerd requesting a car. The Brainerd clerk forwards the customer's request to BN's office at Superior, Wisconsin or Fort Worth, Texas. Cars are stockpiled in Superior, Wisconsin. The cars then are moved to Brainerd or elsewhere by train. Under the proposed procedures, the customer would notify the BN agency at Superior, Wisconsin by calling a toll-free 800 number. The railroad cars that serve the Brainerd area customers already come from Superior yards. The Brainerd agency has no jurisdiction over train movements. This is controlled by Superior. In effect, the change with respect to car ordering will simply substitute a Superior, Wisconsin toll-free number for the Brainerd agency telephone number at the Brainerd station.

11. Demurrage is the rent charged to a customer for the use of a railroad car. Currently, this function is performed by the clerk at the Brainerd agency. If the petition is granted, this function will be handled by a Superior, Wisconsin clerk. This function is handled by computer in any event, and service to the public will be increased due to the "around-the-clock" operation of the Superior, Wisconsin agency. On November 1, these demurrage charges were reduced significantly, thereby reducing the workload of the Brainerd clerk.

12. With respect to billing, currently all billing is handled at the BN

offices in St. Paul, Minnesota. Currently, the clerk enters the charges into a computer and then the charges are billed out of the St. Paul office. The proposed change would have the Superior, Wisconsin clerk enter the billing into the computer, which would then be billed out of the St. Paul offices. The proposed change would merely substitute the Superior clerk or the Brainerd clerk.

13. With respect to out-going shipments, currently, if a customer had a shipment out-going, it would call the Brainerd clerk who then would notify the Superior, Wisconsin clerk. The proposed change would have the customer call the toll-free 800 number directly to Superior, Wisconsin to provide this information. The proposed changes would eliminate the Brainerd intermediary.

14. Currently, the Brainerd clerk at the Brainerd agency handles all the paperwork for heat, lights, telephone and some bills of lading invoices. The Brainerd clerk does not directly pay the bills, but simply forwards them in the mail to the Superior, Wisconsin office for payment. The proposed change would require the businesses to transmit the bills directly to Superior, Wisconsin. With respect to bills of lading, this information can be transmitted by mail or facsimile to the central agency in Superior, Wisconsin or Fort Worth, Texas.

15. With respect to hazardous materials, all labeling of hazardous materials is the responsibility of the customer. Inspections of boxcars containing hazardous materials is the responsibility of the train crew and not the Brainerd agency clerk

16. With respect to damage claims, presently the agency clerk in Brainerd receives the initial information regarding the damage and then reports it to the BN offices in St. Paul, Minnesota, which then is responsible for settlement of the customer's claim. The proposed change would require the customer to directly report damage to St. Paul. The proposed change would eliminate the Brainerd agency intermediary.

17. Accidents, such as derailments or crossing accidents, are reported by radio to a dispatcher located in the Twin Cities area. The dispatcher then notifies the appropriate area train master who then follows established emergency procedure. An agency clerk has no specialized knowledge or training with respect safety, although all railroad employees have a responsibility to report accidents. An agency clerk does view trains as they "roll-by" to observe any potential dangerous circumstances, such as sparks, smoke or loose equipment. However, the clerk does not go out and inspect trains, as this is the responsibility of the train crew. The railroad dispatcher is the responsible person for the reporting of any derailments or other train

accidents. A toll-free number for the Minneapolis dispatcher has been provided to all police and fire departments in the Brainerd area.

18. Mr. Hoelz is the full-time Brainerd agency clerk. He did not attend this hearing. Mr. Hoelz is approximately 66 years old and is eligible for retirement from the Railroad. Michael Hier is the relief clerk at the Brainerd agency. He relieves at Brainerd and at the Staples agency. He works three days per week at Staples and two days per week at Brainerd on Saturdays and Sundays. If the proposed plan is approved by the Board, Mr. Hier will no longer be a relief clerk at the Brainerd agency. Mr. Hier is eligible for transfer under the terms of his union agreement. His position in Staples will not be eliminated. The second relief clerk is Diane Miller. She did not appear at the hearing. She also performs agency services at the Staples station. If the proposed plan is approved by the Board, Ms. Miller will no longer be a relief clerk at the Brainerd agency but can continue her position in Staples.

19. The BN Railroad conducted a time study at the Brainerd station of those activities still being performed by the agency clerk. The study shows the number of units handled and estimates the amount of time consumed performing agency work at the Brainerd station for the year 1992. (See Ex. C to Jurisdictional Ex. A). For example, it takes on the average 6.2 minutes to forward a way-bill for the movement of a railroad car, and 0.1 minute to receive one. For each carload for which the agency is responsible, 6.6 minutes on average, is required. Based on these averages and data concerning way-bills, carloads, and other station work, only 29% of available time of Brainerd employees is required for station work. Thus, the remainder or 71% of the total work time is available for other work. This is based on 7-days-a-week and 8-hours-per-day of agency service by the full-time Brainerd agency clerk and its two relief clerks. BN's study show, however, that the Brainerd agency is a profitable agency. Revenue statistics show net revenue for the Brainerd agency of \$2,913,676 for 1991; \$3,243,074 for 1992; and \$766,513 for January through March of 1993. (Jurisdictional Ex. A, Ex. C).

20. The time study presented by BN at the hearing was performed in 1975 when there were nine clerical employees working at Brainerd. The number of clerks at the Brainerd agency when the study was performed has not been shown to impact the accuracy of the study. The study states how long it takes to perform a number of specific activities, then enumerates and tabulates those activities based upon the traffic at the Brainerd agency. Thus, the number of total hours needed to perform all the activities is determined. The study does not reflect the activities of the particu

21. At the hearing, a representative from the City of Brainerd requested that the record be held open until November 5 so the City could provide to the Administrative Law Judge a resolution from the City Council regarding BN's

proposal to transfer the Brainerd agency. On November 3, 1993, the Administrative Law Judge received a letter from Mayor Bonnie K. Cumberland and City Administrator Daniel J. Vogt of the City of Brainerd which sets forth the City Council's concern for the elimination of any jobs in the City of Brainerd.

BN maintains a significant workforce in the City of Brainerd. It has employees at the maintenance and material shops and also those who operate trains and maintain trackage. This workforce will not be affected by the proposed agency transfer. The only employees impacted by the Railroad's proposal are the agency clerk and the relief clerk.

22. The TCU has objected to the transfer of the Brainerd agency for a number of reasons. First, it believes the State of Minnesota and Board should be concerned about allowing a Minnesota railroad agency to be transferred to another state because if Minnesota customers have problems, they will have difficulty obtaining their rights under Minnesota statutes and rules. Secondly, TCU believes there is no cost savings to the railroad justifying the removal of the Brainerd agency as the Brainerd agency has been shown to be profitable. Finally, it believes that customer service and safety will be negatively impacted by the removal of the Brainerd agency clerk. Safety procedures and accident reporting procedures will not be affected by the proposed changes. Customer service will also not be negatively impacted.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Transportation Regulation Board and the Administrative Law Judge have jurisdiction over the subject matter of the hearing herein pursuant to Minn. Stat. §§ 14.57 through 14.62 and 219.85 (1992).

2. The Minnesota Transportation Regulation Board gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule and the Board has the authority to take the action proposed.

3. Minn. Stat. § 219.85 (1992) provides that no common carrier railroad station shall be abandoned or service reduced without a hearing, and that the Board shall consider whether the abandonment or reduction will substantially reduce the level of safety, health, or welfare of the railroad's customers, its employees, or the public. The statute also provides that the Board, on its own motion or upon the petition of an interested party, may order station agency service established or reestablished, after notice and opportunity for hearing.

4. The petitioner has proved by a preponderance of the evidence that the transfer of the Brainerd agency is not likely to substantially reduce the level of safety, health, or welfare of the Railroad's customers, its employees, or the public. The granting of the application will not adversely affect the public convenience and necessity so long as the Railroad provides free telephone access to the Superior, Wisconsin; the St. Paul, Minnesota; and the Fort Worth, Texas central agencies; and provides personal agency service as requested by the customers.

5. The Administrative Law Judge makes these conclusions for the reasons given in the attached Memorandum. Where necessary, reasons contained in the Memorandum are adopted and incorporated herein as Conclusions.

THIS REPORT IS NOT AN ORDER AND NO AUTHORITY IS GRANTED  
HEREIN. THE TRANSPORTATION REGULATION BOARD WILL ISSUE  
THE ORDER OF AUTHORITY WHICH MAY ADOPT OR DIFFER FROM THE  
FOLLOWING RECOMMENDATIONS.

It is the recommendation of the Administrative Law Judge to the Board that it issue the following:

IT IS HEREBY ORDERED: that the petition of the Burlington Northern Railroad for authority to transfer agency service for the Brainerd, Minnesota agency to the Burlington Northern Railroad Company's centralized service agency at Superior, Wisconsin be GRANTED;

IT IS FURTHER ORDERED: that the Railroad shall not reduce the quality of service provided to customers in the areas affected by the grant of the petition in comparison to the service provided to them in the past; and specifically, the Railroad should provide free telephonic access to its Superior, Wisconsin; St. Paul, Minnesota; and Fort Worth, Texas central agencies; and provide personal service to affected customers as requested by them.

Dated this 2nd day of December, 1993.

/s/\_Phyllis\_A.\_Reha\_\_\_\_\_

PHYLLIS A. REHA  
Administrative Law Judge

NOTICE



Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Taped; cassettes 20,092 and 20,069

#### MEMORANDUM

Pursuant to Minn. Stat. § 219.85 (1992), a railroad company is required to maintain agency service as may be required by the public convenience and necessity. The record of this hearing affirmatively demonstrates that the transfer of the Brainerd agency to the central agency in Superior, Wisconsin will not adversely affect the public convenience and necessity. The evidence shows that the Railroad has already been performing most of the agency functions for the Brainerd agency out of Superior, Wisconsin and St. Paul, Minnesota central agencies due to the systemwide computers and new technology available in the industry. In addition, the centralized agency has railroad personnel 24-hours-per-day, every day of the year. The Brainerd agency has an agency clerk on an 8-hour shift from 8 a.m. to 4 p.m., 7-days-per-week. During other hours when an agency clerk is not available in Brainerd, the customer is required to utilize the centralized agency customer service personnel in Superior.

In addition, the statute requires the Board to consider whether the transfer of services will substantially reduce the level of safety, health, or general welfare of the Railroad's customers, employees, or public. The TCU argues that removing the agency clerk from the Brainerd agency will have a negative impact on safety. It appears from the evidence that the agency clerk from the Brainerd agency has provided a high level of customer service. The agency clerk currently performs a service for train crews by visually viewing trains as the roll-by. Thus, the agency clerk can report problems with equipment or track. However, the agency clerk is not specifically trained to address train safety. Each train crew member is responsible for their train. Train crews are trained to check for safety and operating problems. In addition, the agency clerk does not generally leave his station to walk outside and inspect the train as it passes by. Thus, the roll-by function performed by the agency clerk is not significant to the overall level of safety to the public or employees of the Railroad. Similarly, TCU argues that the agency clerk often times receives reports of train accidents and then notifies the train dispatcher or appropriate emergency personnel. However, it is not within the agency clerk's job description to report accidents. The current procedure is that all accident reports are provided directly to the train dispatcher who is the employee best able to alert all traffic of dangerous conditions. Police

and fire personnel are aware of the Railroad's accident contingency plan and have been provided the telephone number of the train dispatcher in the event of an accident. The procedure of notifying the train dispat

Finally, concern has been expressed that the level of customer service might be reduced with the transfer of agency functions to Superior, Wisconsin.

However, the evidence at the hearing established that most of the customer service functions are already being performed at the central agency in

Superior, Wisconsin. The only added requirements for the customer, if the transfer of agency functions is granted by the Board, is that the customer must

send by mail or facsimile certain shipping documents, or make extra telephone calls. The customers have been provided with toll-free 800 telephone service to the central agencies. However, if personal service is necessary and requested by the customer, the Railroad is equipped to handle such personal service. The Administrative Law Judge has recommended to the Board that it further order the Railroad not to reduce the quality of service provided to shippers in the area affected by the grant of the petition; and to specifically

condition the grant of the petition upon the Railroad's assurance that it continue to provide free telephonic access to the central agency; and to provide personal service to affected customers if requested by them. With these assurances, service to the affected customers in the Brainerd area and efficiency will not be reduced.

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